

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**IN THE MATTER OF:**

**FIFTH AVENUE CONDOS, LLC**

**TRELLIS PROJECT**

**SAN DIEGO COUNTY, CALIFORNIA**

**WDID NO. 9 000001089**

**NONCOMPLIANCE WITH ORDER NO.**

**R9-2000-0090, NPDES NO. CAG919001,**

**GENERAL WASTE DISCHARGE**

**REQUIREMENTS FOR TEMPORARY**

**GROUNDWATER EXTRACTION & SIMILAR**

**WASTE DISCHARGES TO SAN DIEGO BAY &**

**STORM DRAINS OR OTHER CONVEYANCE**

**SYSTEMS TRIBUTARY THERETO**

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**COMPLAINT NO. R9-2003-0375**

**FOR**

**ADMINISTRATIVE CIVIL LIABILITY**

**WITH**

**MANDATORY MINIMUM PENALTIES**

**OCTOBER 15, 2003**

**FIFTH AVENUE CONDOS, LLC IS HEREBY GIVEN NOTICE THAT:**

1. Fifth Avenue Condos, LLC is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, Water Code section 13385 et seq.
2. A public hearing on this matter is tentatively scheduled before the Regional Board on December 10, 2003, at the Regional Board office, 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. At the hearing, Fifth Avenue Condos, LLC will have the opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. Additional notice of this public hearing and the hearing procedures will be provided to Fifth Avenue Condos, LLC prior to the hearing date with the agenda for the Regional Board meeting.
3. At the hearing, the Regional Board will determine the validity of the allegations contained herein and, if the allegations are found to be true, will consider whether to assess civil liability in the amount proposed by this Complaint, or in some other amount.

**ALLEGATION**

4. On May 19, 2003 Fifth Avenue Condos, LLC violated Order No. R9-2000-0090, *NPDES No. CAG919001, General Waste Discharge Requirements For Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto*. These violations are due to effluent limit

exceedances of Total Suspended Solids (TSS) as reported in the May 2003 Discharger Self-Monitoring Report.


5. The following facts are the basis for the alleged violations in this matter:
  - a. Fifth Avenue Condos, LLC is the developer of the Trellis Project, a 149 unit condominium homes with an underground parking garage, landscaped lobby courtyard, and common entertainment courtyard. The Trellis Project is located at K Street between 5<sup>th</sup> and 6<sup>th</sup> Avenues in the historic Gaslamp District of downtown San Diego. Fifth Avenue Condos, LLC is authorized pursuant to Order No. R9-2000-0090 to discharge groundwater to San Diego Bay, but not to exceed 288,000 gallons per day. Order No. R9-2000-0090 was adopted on June 14, 2000. On December 20, 2002 the Regional Board received an application from Fifth Avenue Condos, LLC as well as a check for \$1,000. On January 23, 2003, the Regional Board enrolled Fifth Avenue Condos, LLC under Order No. R9-2000-0090 to temporarily discharge groundwater dewatering until the underground parking structure is completed.
  - b. The Discharge Specifications' section of Order No. R9-2000-0090 states that the Total Suspended Solids Instantaneous Maximum is 50 mg/L and the 30-day Average is 30 mg/L. On July 11, 2003, the Regional Board received the May and June 2003 Trellis Project monitoring report. A Total Suspended Solids result of 79 mg/L, 58% greater than the Instantaneous Maximum Discharge Specification was reported for May 19, 2003. No other Total Suspended Solids results were reported for the month of May 2003, therefore the 30-day Average for May 2003 is 79 mg/L, 163% greater than the Discharge Specification.
  - c. Water Code Section 13385(h)(2) states that a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more. Total Suspended Solids is a Group 1 pollutant.
6. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation. Under Water Code section 13385(h) the amount of the mandatory minimum penalty that must be assessed is \$6,000 for the two serious violations.

#### **PROPOSED CIVIL LIABILITY**

7. Pursuant to Section 13385 (h) of the Water Code a mandatory minimum penalty should be imposed on the Trellis Developers by the Regional Board in the amount of \$6,000, the amount of the mandatory minimum penalty, for the above violations.

**October 15, 2003**

Dated this 15<sup>th</sup> day of October 2003.



**JOHN H. ROBERTUS**  
Executive Officer